



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2008

Ms. Cynthia Villarreal-Reyna
Legal Services Division
Texas Department of Insurance
MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2008-12052

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 320981.

The Texas Department of Insurance (the "department") received a request for copies of all "Original Petitions for Judicial Review filed by any Workers' Compensation Insurance Carrier within the last sixty (60) days[.]" You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information is subject to a previous ruling issued by this office. On August 20, 2008, this office issued Open Records Letter No. 2008-11463

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2008), in which we ruled the department must withhold portions of the requested information under section 552.101 in conjunction with section 402.083 of the Labor Code. You indicate the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine the department must continue to rely on our ruling in Open Records Letter No. 2008-11463 as a previous determination and withhold the information at issue in that ruling in accordance with that prior ruling. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We will address your argument for the remaining requested information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 402.083 of the Labor Code provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle." *See* Labor Code § 402.083. This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 6 (1993). Prior decisions of this office have found information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code.² Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. You state some of the submitted information derived from claim files implicitly or explicitly discloses the identities of employees who have filed workers' compensation claims. Further, you state the requestor is not one of the persons or entities to which the division is permitted to release claim file information under sections 402.084 and 402.085 of the Labor Code. Based on your representations and our review, we agree the information you have marked, in addition to the information we have marked, is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

²The "commission" refers to the predecessor agency of the Texas Department of Insurance, Division of Workers' Compensation, which was established under House Bill 7, 79th Legislature, R.S. (2005).

In summary, the department must continue to rely on Open Records Letter No. 2008-11463 as a previous determination with respect to the information at issue in that ruling that is also at issue in the present request. The department must withhold the information it has marked, in addition to the information we have marked, under section 552.101 in conjunction with section 402.083 of the Labor Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 320981

Enc. Submitted documents

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(w/o enclosures)